

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 56 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME-TAX

Versus

SYNBIOTICS LTD.

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Appearance:

MR MIHIR JOSHI, Advocate for the Petitioner

MR B.D. KARIA, Advocate for the respondent.

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE KUNDAN SINGH

Date of decision: 05/03/98

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The Income Tax Appellate Tribunal has referred the following question for the opinion of this Court under Section 256(1) of the Income Tax Act, 1961.

"Whether, on the facts and in the circumstances of the case the Appellate Tribunal is right in

law in allowing investment allowance on guarantee commission and loss caused as a result of fluctuation in the rate of foreign exchange."

Though the question referred to us is one, it involves two distinct aspects. The investment allowance on the guarantee commission and the investment allowance on the loss caused as a result of fluctuation in the rate of foreign exchange.

As regards the aspect of allowance of investment allowance on guarantee commission, both the sides have drawn our attention to the decision of the Hon'ble Supreme Court in the case of Addl. Commissioner of Income Tax Vs. Akkamamba Textiles Ltd., reported in 227 ITR 464, by which the Supreme Court dismissed the appeal of the Revenue against the decision of the Andhra Pradesh High Court in CIT Vs. Akkamamba Textiles Ltd., reported in 117 ITR 294 and affirmed the decision of the Andhra Pradesh High Court in which it was held that the guarantee commission paid by the assessee to the banker and the insurance company for insuring deferred payment of the purchase consideration of machinery was an admissible deduction under Section 37 of the Income Tax Act, 1961. The Andhra Pradesh High Court had held that the question whether a particular expenditure was revenue expenditure incurred for the purpose of business must be viewed in the larger context of business necessity or expediency. It was held that the commission paid by the assessee to the guarantor for enabling the assessee to make deferred payment of the purchase consideration, constitutes revenue expenditure and not capital expenditure and therefore, is admissible as deduction from the income. This view having been affirmed by the Supreme Court, concludes the first part of the question referred to us and we hold that the Tribunal committed an error in allowing investment allowance on guarantee commission.

The latter part of the question referred to us pertains to investment allowance on loss caused as a result of fluctuation in the rate of foreign exchange. Admittedly, the relevant machinery was installed by the assessee some time prior to the year 1966, while the additional liability due to fluctuation had occurred in the previous year 1979-80. The investment allowance is required to be quantified on the actual cost of the asset and the deduction is to be allowed as per the provisions of Section 32A of the Act. The question whether any fluctuation in the exchange rate in subsequent years which raises the liability of the assessee, can relate

back for recomputing the actual cost in the earlier previous year in which the investment allowance was worked out, came to be considered by this Bench in ITR 227/85 and it was held that there cannot be any such subsequent revision of investment allowance in the later previous year in which the fluctuation in the exchange rate took place, which had the effect of making addition to the actual cost of such additional liability by virtue of Section 43A(1) in that subsequent previous year. For the same reasons as we have given for our decision rendered on 4.3.98 in ITR No. 227/85, we hold that the Tribunal committed an error in allowing investment allowance on the loss caused as a result of fluctuation in the rate of foreign exchange in the previous year, 1979-80 in respect of the investment allowance, which was worked out several years ago when the machinery was installed and used.

In view of what we have said above, the question referred to us is answered in the negative in favour of the Revenue and against the assessee. The reference stands disposed of accordingly with no order as to costs.

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\*/Mohandas